

## UNITED STATES DISTRICT COURT

FILED  
U. S. DISTRICT COURT  
DISTRICT OF NEBRASKA

for the

2018 OCT -4 PM 12:46

District of

Division

Case No.

4:18cv3138

(to be filled in by the Clerk's Office)

James Cotton

## Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint.  
 If the names of all the plaintiffs cannot fit in the space above,  
 please write "see attached" in the space and attach an additional  
 page with the full list of names.)

Douglas County -v- Nebraska  
 Douglas County Correction Center  
 Corrections Officer, Mr. Stevens  
 Corrections officer, Mr. Estevez

## Defendant(s)

(Write the full name of each defendant who is being sued. If the  
 names of all the defendants cannot fit in the space above, please  
 write "see attached" in the space and attach an additional page  
 with the full list of names. Do not include addresses here.)

## COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

## NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	James Cotton		
All other names by which you have been known:			
ID Number	#85198		
Current Institution	Tecumseh State Correctional Institution		
Address	Tecumseh Prison 2725 North Hwy 50		
	<u>City</u>	<u>State</u>	<u>Zip Code</u>
	Tecumseh,	Nebraska	68450

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

## Defendant No. 1

Name	Douglas County, Nebraska		
Job or Title ( <i>if known</i> )	Unknown		
Shield Number	Unknown		
Employer	Douglas County Corrections Center		
Address	710 South 17th St. Omaha, Ne 68102		
	<u>City</u>	<u>State</u>	<u>Zip Code</u>
	<input type="checkbox"/> Individual capacity <input checked="" type="checkbox"/> Official capacity		

## Defendant No. 2

Name	Douglas County Corrections Center		
Job or Title ( <i>if known</i> )	Jail		
Shield Number			
Employer	Douglas County Corrections Center		
Address	710 South 17th St. Omaha, Ne 68102		
	<u>City</u>	<u>State</u>	<u>Zip Code</u>
	<input type="checkbox"/> Individual capacity <input checked="" type="checkbox"/> Official capacity		

## Defendant No. 3

Name	Corrections Officer Stevens
Job or Title ( <i>if known</i> )	Corrections Officer
Shield Number	Unknown
Employer	Douglas County Correction Center
Address	710 South 17th St. Omaha, Ne 68102

City

State

Zip Code

 Individual capacity     Official capacity

## Defendant No. 4

Name	Corrections Officer Estevez
Job or Title ( <i>if known</i> )	Corrections Officer
Shield Number	
Employer	Douglas County Corrections Center
Address	710 South 17th St. Omaha, Ne 68102

City

State

Zip Code

 Individual capacity     Official capacity

## II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (*check all that apply*):

Federal officials (a *Bivens* claim)  
 State or local officials (a § 1983 claim)

## B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

1. 8th Amendment of U.S. Constitution
2. Americans with Disabilities Act "A.D.A"
- 42 USC. Section 12132 (2006)
3. Rehabilitation act of 1973, Section 504

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

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N/A

D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

See attached 3 pages "BASIS FOR JURISDICTION" page 3 of 11  
Continued and Page 4 of 11 Section.

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### III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- Pretrial detainee
- Civilly committed detainee
- Immigration detainee
- Convicted and sentenced state prisoner
- Convicted and sentenced federal prisoner
- Other (*explain*)

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### IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

N/A

*See attached Biv's for Jurisdiction*

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B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

Douglas County Correctional Center, 10-24-2016, Omaha, Neb.

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BASIS FOR JURISDICTION

Continued  
SECTION D.

CAUSE OF ACTION

COUNT ONE

MONELL CLAIM WHERE DEFENDANT DOUGLAS COUNTY, NEBRASKA WAS THE MOVING FORCE FOR CONSTITUTIONAL VIOLATIONS AND FEDERAL LAW BY IT'S FAILURE TO TRAIN AND SUPERVISE ALL SUBORTINATES AND NAMED DEFENDANTS HEREIN.

Defendant Douglas County, Nebraska is the "moving force" behind it's failure to train and supervise all subordinates and named defendants herein to follow clearly established law, rules and regulations that directed Defendants C.O. Stevens and C.O. Estevez not to use excessive force where the defendants maliciously and sadistically applied on Plaintiff for him merely requesting that he be provided a medical issued wheelchair for transport.

The unnecessary and wanton infliction of pain amounted to deliberate indifference towards Plaintiff which is an Eighth Amendment violation from the right to be free from cruel and unusual punishment. Defendant Douglas County, Nebraska's failure to train and supervise caused plaintiff damages.

COUNT TWO

DISCRIMINATION BASED ON DISABILITY PURSUANT TO TITLE II OF THE A.D.A. AGAINST DEFENDANT DOUGLAS COUNTY CORRECTION CENTER "DCCC".

Plaintiff is a qualified individual with a disability on record with the Social Security Administration, Omaha, Neb.; since 2008. As defined in 42 U.S.C. Section 12131(2). Because of nerve damage to his feet, full hip replacement, right knee out (bone on Bone), unstable lumbar spine (four major surgeries), full thickness tendon shoulder tears, degenerative disc and vertebrae diseases of the spine from 4 major back surgeries, and other physical impairments, it substantially limits his major life activities.

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BASIS FOR JURISDICTION

CONTINUED  
Section D.

Plaintiff was otherwise qualified to receive benefits and participate in Defendant DCCC's services, programs, and activities.

The A.D.A. and its implementing regulations require that alternative services be made available to meet the needs of qualified individuals with disabilities, such as plaintiff. The DCCC and the Defendants, Stevens and Estevez denied Plaintiff access to a wheelchair and other accomodations, thereby discriminating against him because of his disabilities.

This A.D.A. violation by the defendant DCCC and defendants Stevens and Estevez caused Plaintiff damages.

COUNT THREE

**DISCRIMINATION BASED ON DISABILITY PURSUANT TO SECTION  
504 REHABILITATION ACT OF 1973, 29 U.S.C. 794(a)(2006)  
AGAINST DEFENDANT, DOUGLAS COUNTY CORRECTIONS CENTER'S  
FAILURE TO ACCOMODATE "WHEELCHAIR"**

Plaintiff is disabled/handicapped as defined in 29 U.S.C. Section 705. Plaintiff is or was otherwise qualified to receive the benefits and to participate in defendant DCCC's services, programs, and activities.

Defendant DCCC was responsible for Defendant's Stevens and Estevez' refusal to provide Plaintiff an accomodation, "wheelchair" when they knew Plaintiff was medically prescribed it and where it was medically necessary to transport Plaintiff. Plaintiff was discriminated against and is a violation of the Rehabilitation Act, of 1973 Section 504, which caused Plaintiff damages.

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Page 4 of 11

BASIS FOR JURISDICTION

CONTINUED  
SECTION D.

COUNT FOUR

DEFENDANTS STEVENS AND ESTEVEZ'S USE OF EXCESSIVE FORCE AGAINST PLAINTIFF WHILE ACTING UNDER COLOR OF STATE LAW WAS APPLIED MALICIOUSLY AND SADISTICALLY WITH DELIBERATE INDIFFERENCE IN VIOLATION OF EIGHTH AMENDMENT RIGHT.

Defendants Stevens and Estevez ignored plaintiff's request to be provided a "wheelchair", for transport, due to his disability on October 24, 2016, when escorting plaintiff out of protective custody unit max-1 at the DCCC. Instead the defendants used excessive force against Plaintiff that was unnecessary, maliciously and sadistically for the very purpose of causing Plaintiff bodily injury.

Both defendant Stevens and Estevez was acting under color of State law. The Defendants action were deliberately indifferent to Plaintiff's Eighth Amendment U.S. Constitutional guranteed to be free of cruel and unusual punishment as proscribed. The Defendants behavior caused Plaintiff damages.

C. What date and approximate time did the events giving rise to your claim(s) occur?

The incident occurred on 10-24-2016 @ 11:45 AM

D. What are the facts underlying your claim(s)? (*For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?*)

About 11:45 a.m., on October 24, 2016, Plaintiff and cellmate, Smith got into an altercation. A female C.o., name unknown handcuffed plaintiff behind him and seated him in a chair. This was in the protective custody unit, max-1, at the Douglas County Correction Center, Omaha, Nebraska. Within 15 minutes of being seated defendants Stevens and estevez, (both black male C.O.'s) came into the Max-1 P.C. unit and began talking loud to Plaintiff as they yanked him out of his chair. Plaintiff advised both that due to his

SEE ATTACHED PAGES Section D. continued page 5 of 11

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I sustained a concussion, black eyes, head trauma (severe) swollen rib Intercostal torn and severe bruising. And had to have eyebrow glued shut.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

DUE to the nature of this claim and that Defendants Stevens and estevez are still employed at the Department of Corrections in Douglas County, Nebraska, Plaintiff respectfully requests that Venue stays in this Court. Plaintiff fears for his life if he is forced to be housed back at the DCCC. (Continue on attached page)

## SECTION D. CONTINUED.      UNDERLYING FACTS OF CLAIM      PAGE 5 of 11

disability that he needed his medically issued wheelchair. The defendants ignore plaintiff and stated "well your walking today Motherfucker." Both the female c.o. and unit c.o. (names unknown), also advised defendants Stevens and Estevez that Plaintiff needed a wheelchair for transport. the defendants abusively grabbed plaintiff and began running with Plaintiff leaving the max-1 unit into the hallway. Stevens was verbally abusing plaintiff and Estevez advised plaintiff, "since you like suing people, you can sue us too". Plaintiff's legs gave out from underneath him. The defendants then slammed Plaintiff head first into the concrete floor knocking him unconscious.

As plaintiff was regaining consciousness he saw blood on the concrete floor below him. Defendants were talking rude to plaintiff and as they were pulling on plaintiff by the handcuffs behind him, Stevens stated, " let's try this again Motherfucker". C.O. Hansen standing there beside Plaintiff, stated,"He's unresponsive, maybe we should get him a wheelchair now." Plaintiff was taken to the infirmary, where they glued his eyebrow shut to stop the bleeding, then to the Lieutenant's for more verbal abuse, the placed back in max-1 protective custody unit.

Plaintiff contacted the Sheriff's Department who brought over their crime lab, to investigate, take pictures and review the video feed in max-1 and outside hallway.

Plaintiff called Public defender, Jami Jacobs, who sent over her private investigator, who took pictures. Plaintiff has in his possession a copy of those pictures as well.

Please review the attached 20 for more information.

PAGE 5 of 11 CONTINUED

VII. RELIEF

Plaintiff requests Judgment against Defendants Douglas County, Nebraska, and Douglas County Correction Center in their Official capacities as to Counts One; Two; and Three. And for Declaratory and Equitable relief as allowed by 28 USC Sections, 2201,2202 and 42 USC Section 1983, including preliminary and permanent injunctions against the defendants for any retaliatory actions and to restrain them from future violations.

To award Plaintiff compensatory damages against said defendants as stated in basis for complaint for cause of actions.

To award Plaintiff appropriate attorney fees and all costs on behalf of Plaintiff as provided under the Americans Disability Act, Rehabilitation Act of 1973, Section 504. And Civil Rights Act of 1871 42 USC Section 1988.

Plaintiff requests Judgment against Defendants Stevens and Estevez in their individual capacities as to Count Four, and as stated in basis for complaint and cause of action.

To award Plaintiff compensatory damages against defendants as stated in basis for complaint and cause of action.

To award Plaintiff punitive damages against defendants as stated in basis for complaint and cause of action.

To award plaintiff approriate attorney fees and all costs on behalf of Plaintiff as provided under the civil Rights Act of 1871; and 42 USC Section 1988.

And to award Plaintiff any such other relief to which Plaintiff may show himself justly entitled to or which this Honorable Court may deem just and proper.

Plaintif demands a trial by jury.

**VII. Exhaustion of Administrative Remedies Administrative Procedures**

The Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a), requires that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes  
 No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Douglas County Correction Center      Omaha, Nebraska

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

Yes  
 No  
 Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

Yes  
 No  
 Do not know

If yes, which claim(s)?

All claims

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

Yes

No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes

No

E. If you did file a grievance:

1. Where did you file the grievance?

Yes I the plaintiff filed several grievances at the Douglas county corrections center. There are ~~10~~ total 13 grievances in all. (See attached)

*Exhibits - 1-13*

2. What did you claim in your grievance?

I the plaintiff claimed that I was assaulted by Co Stevens and Estevez, For requesting a wheelchair. Knocking me unconscious and a concussion, Eye brows split opened and black eyes.

3. What was the result, if any?

The result from them was that they cannot do anything until the county sherrifs dept. completes their criminal investigation.

(see attached 18 pages of grievances)

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

Yes I filed an inmate step two grievance, Process is complete.

]

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

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2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

N/A

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G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

See attached ~~20~~ pages Exhibits 1-13

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(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.) (See attached ~~20~~ pages)

### VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

Yes

No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

N/A

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes

No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (*If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.*)

1. Parties to the previous lawsuit N/A

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_

2. Court (*if federal court, name the district; if state court, name the county and State*)

N/A \_\_\_\_\_

3. Docket or index number

N/A \_\_\_\_\_

4. Name of Judge assigned to your case

N/A \_\_\_\_\_

5. Approximate date of filing lawsuit

N/A \_\_\_\_\_

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition. N/A \_\_\_\_\_

7. What was the result of the case? (*For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?*)

N/A \_\_\_\_\_

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment? Yes , Case# 8:16 CV 153

Yes No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (*If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.*)

1. Parties to the previous lawsuit

Plaintiff(s) James Cotton

Defendant(s) Douglas County Dept. Corrections, et.al.

2. Court (*if federal court, name the district; if state court, name the county and State*)  
The united states court for the district of Nebraska  
(Omaha)

3. Docket or index number

8:16 CV 153

4. Name of Judge assigned to your case

Robert F. Rossiter, Jr.

5. Approximate date of filing lawsuit

05-11-2016

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition

02-2017 plaintiff

7. What was the result of the case? (*For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?*)

Plaintiff requested Case dismissed w/o prejudice

**IX. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

Sept 28, 2018

Signature of Plaintiff

James Cotton

Printed Name of Plaintiff

James Cotton

Prison Identification #

85198

Prison Address

T.S.C.I. 2725 North Hwy 50TecumsehNE68450

City

State

Zip Code

**B. For Attorneys**

Date of signing:

Signature of Attorney

N/A

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

James Cotton #85198  
T.S.C.I. P.O. Box 900  
Tecumseh, NE 68450

9-28-18

Office of the Clerk / U.S. District Court for Nebraska  
593 Denney Federal Building  
100 Centennial Mall North  
Lincoln, NE 68508

Re: Civil Complaint enclosed

Dear Clerk of Court:

Please file the enclosed Civil  
Rights Complaint - Forms provided  
by the Court.

Thank You,

Sincerely

James Cotton

RECEIVED

OCT 04 2018

CLERK  
U.S. DISTRICT COURT  
LINCOLN

